

Message Text

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ACTION L-03

INFO OCT-01 NEA-10 ISO-00 OPIC-06 EB-07 AID-05 OMB-01

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FM AMEMBASSY MUSCAT

TO SECSTATE WASHDC 1833

UNCLAS SECTION 1 OF 2 MUSCAT 0157

E.O. 11652: N/A

TAGS: EFIN MU

SUBJECT: NEGOTIATED TEXT OF OPIC AGREEMENT

REF: STATE 36431

TEXT OF PROPOSED OPIC AGREEMENT READS AS FOLLOWS:

"EXCELLENCY:

I HAVE THE HONOR TO REFER TO CONVERSATIONS WHICH HAVE RECENTLY TAKEN PLACE BETWEEN REPRESENTATIVES OF OUR TWO GOVERNMENTS RELATING TO INVESTMENTS IN THE SULTANATE OF OMAN WHICH PROMOTE THE DEVELOPMENT OF THE ECONOMIC RESOURCES AND PRODUCTIVE CAPACITIES OF THE SULTANATE OF OMAN AND TO INSURANCE AND GUARANTIES OF SUCH INVESTMENTS ISSUED AS AN INCENTIVE BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA. THE AGENCY OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA PRESENTLY AUTHORIZED TO ISSUE SUCH INSURANCE OR GUARANTIES IS THE OVERSEAS PRIVATE INVESTMENT CORPORATION. I ALSO HAVE THE HONOR TO CONFIRM THE FOLLOWING UNDERSTANDINGS REACHED AS A RESULT OF THOSE CONVERSATIONS:

1. WHEN AN INVESTOR PROPOSES TO INVEST IN A PROJECT OR ACTIVITY WITHIN THE SULTANATE OF OMAN, WITH THE ASSISTANCE OF INSURANCE OR GUARANTIES (HEREINAFTER REFERRED TO AS "COVERAGE") ISSUED PURSUANT TO THIS AGREEMENT BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA, THE GOVERNMENT OF THE UNITED STATES OF AMERICA (THE ISSUING GOVERNMENT) AND THE GOVERN-

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MENT OF THE SULTANATE OF OMAN (THE HOST GOVERNMENT) SHALL,

UPON THE REQUEST OF EITHER, CONSULT RESPECTING THE NATURE OF THE PROJECT OR ACTIVITY.

2. THE PROCEDURES SET FORTH IN THIS AGREEMENT SHALL APPLY ONLY WITH RESPECT TO COVERAGE OWF INVESTMENTS IN PROJECTS OR ACTIVITIES APPROVED BY THE HOST GOVERNMENT.

3. IF THE ISSUING GOVERNMENT MAKES PAYMENT TO ANY INVESTOR UNDER COVERAGE ISSUED PURSUANT TO THIS AGREEMENT, THE HOST GOVERNMENT SHALL, SUBJECT TO THE PROVISIONS OF PARAGRAPH 4, RECOGNIZE THE TRANSFER TO THE ISSUING GOVERNMENT OF ANY CURRENCY, CREDITS, ASSETS, OR INVESTMENT ON ACCOUNT OF WHICH PAYMENT UNDER SUCH COVERAGE IS MADE AS WELL AS THE SUCCESSION OF THE ISSUING GOVERNMENT TO ANY RIGHT, TITLE, CLAIM, PRIVILEGE, OR CAUSE OF ACTION EXISTING, OR WHICH MAY ARISE, IN CONNECTION THEREWITH. THE ISSUING GOVERNMENT SHALL ASSERT NO GREATER RIGHTS THAN THOSE OF THE TRANSFERRING INVESTOR WITH RESPECT TO ANY INTERESTS TRANSFERRED OR SUCCEEDED TO UNDER THIS PARAGRAPH AND SHALL BE SUBJECT TO LEGAL DEFENSES ASSERTABLE AGAINST THE TRANSFERRING INVESTOR TO THE SAME EXTENT AS A TRANSFEREE THAT IS A PRIVATE ENTITY. THE ISSUING GOVERNMENT DOES, HOWEVER, RESERVE ITS RIGHTS TO ASSERT A CLAIM IN ITS SOVEREIGN CAPACITY UNDER INTERNATIONAL LAW.

4. TO THE EXTENT THAT THE LAWS OF THE HOST GOVERNMENT PARTIALLY OR WHOLLY INVALIDATE OR PROHIBIT THE ACQUISITION FROM A COVERES INVESTOR OF ANY INTERESTS IN ANY PROPERTY WITHIN ITS TERRITORY BY THE ISSUING GOVERNMENT, THE HOST GOVERNMENT SHALL PERMIT SUCH INVESTOR AND THE ISSUING GOVERNMENT TO MAKE APPROPRIATE ARRANGEMENTS PURSUANT TO WHICH SUCH INTERESTS ARE TRANSFERRED TO AN ENTITY PERMITTED TO OWN SUCH INTERESTS UNDER THE LAWS OF THE HOST GOVERNMENT.

5. AMOUNTS IN THE LAWFUL CURRENCY OF THE HOST GOVERNMENT AND CREDITS TFEUBK ACQUIRED BY THE ISSUING GOVERNMENT UNDER COVERAGE ISSUED PURSUANT TO THIS AGREEMENT SHALL BE ACCORDED TREATMENT NO LESS FAVORABLE THAN THAT ACCORDED TO FUNDS OF NATIONALS OF THE UNITED STATES OF AMERICA DERIVING FROM INVESTMENT ACTICVITIES LIKE THOSE IN WHICH THE INVESTOR HAS BEEN ENGAGED, AND SUCH AMOUNTS AND CREDITS SHALL BE FREELY AVAIL-
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ABLE TO THE ISSUING GOVERNMENT FOR ITS USE IN THE TERRITORY OF THE HOST GOVERNMENT.

6.(A) DIFFERENCES BETWEEN THE TWO GOVERNMENTS CONCERNING THE INTERPRETATION OF THE PROVISIONS OF THIS AGREEMENT SHALL BE RESOLVED, INSOFAR AS POSSIBLE, THROUGH NEGOTIATIONS BETWEEN THE TWO GOVERNMENTS. IF SUCH A DIFFERENCE CANNOT BE RESOLVED WITHIN A PERIOD OF THREE MONTHS FOLLOWING THE RE-

QUEST FOR SUCH NEGOTIATIONS, IT SHALL BE SUBMITTED, AT THE REQUEST OF EITHER GOVERNMENT, TO AN ARBITRAL TRIBUNAL FOR RESOLUTION IN ACCORDANCE WITH PARAGRAPH 6 (C).

(B) ANY CLAIM, ARISING OUT OF ANY INVESTMENT FOR WHICH COVERAGE HAS BEEN ISSUED IN ACCORDANCE WITH THIS AGREEMENT, AGAINST EITHER OF THE TWO GOVERNMENTS, WHICH, IN THE OPINION OF THE OTHER, PRESENTS A QUESTION OF PUBLIC INTERNATIONAL LAW SHALL, AT THE REQUEST OF THE GOVERNMENT PRESENTING THE CLAIM, BE SUBMITTED TO NEGOTIATIONS. IF AT THE END OF THREE MONTHS FOLLOWING THE REQUEST FOR NEGOTIATIONS THE TWO GOVERNMENTS HAVE NOT RESOLVED THE CLAIM BY MUTUAL AGREEMENT, THE CLAIM, INCLUDING THE QUESTION OF WHETHER IT PRESENTS A QUESTION OF PUBLIC INTERNATIONAL LAW, SHALL BE SUBMITTED, AT THE REQUEST OF EITHER GOVERNMENT, TO AN ARBITRAL TRIBUNAL FOR RESOLUTION IN ACCORDANCE WITH PARAGRAPH 6(C).

(C) THE ARBITRAL TRIBUNAL FOR RESOLUTION OF DISPUTES PURSUANT TO PARAGRAPHS 6(A) AND 6(B) SHALL BE ESTABLISHED AND FUNCTION AS FOLLOWS:

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(I) EACH GOVERNMENT SHALL APPOINT ONE ARBITRATOR; THESE TWO ARBITRATORS SHALL DESIGNATE A PRESIDENT BY COMMON AGREEMENT WHO SHALL BE A CITIZEN OF A THIRD STATE AND BE APPOINTED BY THE TWO GOVERNMENTS. THE ARBITRATORS SHALL BE APPOINTED WITHIN TWO MONTHS AND THE PRESIDENT WITHIN THREE MONTHS OF THE DATE OF RECEIPT OF EITHER GOVERNMENT'S REQUEST FOR ARBITRATION. IF THE APPOINTMENTS ARE NOT MADE WITHIN THE FOREGOING

TIME LIMITS, EITHER GOVERNMENT MAY, IN THE ABSENCE OF ANY OTHER AGREEMENT, REQUEST THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE TO MAKE THE NECESSARY APPOINTMENT OR APPOINTMENTS, AND BOTH GOVERNMENTS AGREE TO ACCEPT SUCH APPOINTMENT OF APPOINTMENTS.

(II) THE ARBITRAL TRIBUNAL SHALL BASE ITS DECISION ON THE APPLICABLE PRINCIPLES AND RULES OF PUBLIC INTERNATIONAL LAW. THE ARBITRAL TRIBUNAL SHALL DECIDE BY MAJORITY VOTE. ITS DECISION SHALL BE FINAL AND BINDING. ONLY THE TWO GOVERNMENTS MAY REQUEST THE ARBITRAL PROCEDURE AND PARTICIPATE IN IT.

(III) EACH OF THE GOVERNMENTS SHALL PAY THE EXPENSE OF ITS ARBITRATOR AND OF ITS REPRESENTATION IN SUCH PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL; THE EXPENSES OF THE PRESIDENT AND THE OTHER COSTS SHALL BE PAID IN EQUAL PARTS BY THE TWO GOVERNMENTS. THE ARBITRAL TRIBUNAL MAY ADOPT REGULATIONS CONCERNING THE COSTS, CONSISTENT WITH THE FOREGOING.

(IV) IN ALL OTHER MATTERS, THE ARBITRAL TRIBUNAL SHALL REGULATE ITS OWN PROCEDURES.

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7. THIS AGREEMENT SHALL CONTINUE IN FORCE UNTIL SIX MONTHS FROM THE DATE OF RECEIPT OF A NOTE BY WHICH ONE GOVERNMENT INFORMS THE OTHER OF AN INTENT NO LONGER TO BE A PARTY TO THE AGREEMENT. IN SUCH EVENT, THE PROVISIONS OF THE AGREEMENT WITH RESPECT TO COVERAGE ISSUED WHILE THE AGREEMENT WAS IN FORCE SHALL REMAIN IN FORCE FOR THE DURATION OF SUCH COVERAGE, BUT IN NO CASE LONGER THAN TWENTY YEARS AFTER THE DENUNCIATION OF THE AGREEMENT.

8. THIS AGREEMENT SHALL ENTER INTO FORCE ON THE DATE OF THE NOTE BY WHICH THE HOST GOVERNMENT COMMUNICATES TO THE ISSUING GOVERNMENT THAT THE AGREEMENT HAS BEEN APPROVED IN CONFORMITY WITH THE HOST GOVERNMENT'S CONSTITUTIONAL PROCEDURES.

UPON RECEIPT OF A NOTE FROM YOUR EXCELLENCY INDICATING THAT THE FOREGOING PROVISIONS ARE ACCEPTABLE TO THE GOVERNMENT OF THE SULTANATE OF OMAN, THE GOVERNMENT OF THE UNITED STATES OF AMERICA WILL CONSIDER THAT THE NOTE AND YOUR REPLY THERETO CONSTITUTE AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS ON THIS SUBJECT, THE AGREEMENT TO ENTER INTO FORCE IN ACCORDANCE WITH PARAGRAPH 8.

ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST CONSIDERATION."

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